

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

UNITED STATES OF AMERICA)	Case No. 5:02-CR-30031-1
)	
v.)	
)	
MARK ANTHONY ELLIOTT,)	By: Hon. Michael F. Urbanski
Defendant)	Chief United States District Judge

MEMORANDUM OPINION

Mark Anthony Elliott, represented by counsel, filed a motion to reduce his sentence pursuant to Section 404(b) of the First Step Act of 2018. ECF No. 102. This is the second motion for First Step Act relief that Elliot has filed. In his first motion, where he also was represented by counsel, he asked that his underlying sentence be reduced by nine months and his overserved time be applied to his revocation sentence. In the pending motion he asks that his revocation sentence be reduced by nine months, based on the same reasoning. Compare Mot. to Reduce Sent. and Resp., ECF Nos. 80 and 85, with Mot. to Reduce Sent., ECF No. 102. The court denied the earlier motion on October 16, 2019. ECF Nos. 86, 87. Elliot filed an appeal with the Fourth Circuit Court of Appeals on October 29, 2019, but later moved to dismiss the appeal. The Fourth Circuit granted the motion to dismiss on August 6, 2021. ECF Nos. 99, 100. Elliott filed the pending motion approximately three months later.


Section 404(c) of the First Step Act provides that “No court shall entertain a motion made under this section to reduce a sentence if ... a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits.” 132 Stat. at 5222. This section of the statute prohibits successive First Step Act motions. See United States v. Harris, 816 F. App’x 30 (10th Cir.

2020) (affirming dismissal of First Step Act case by the district court because court had already considered and rejected two similar motions by movant); United States v. Tillman, No. 1:10-466-JFA, 2023 WL 1802116, at *5 (D.S.C. Feb. 7, 2023) (“Judge Seymour has already reduced the defendant’s sentence under FSA § 404(b) and this court is prohibited from entertaining another successive motion under § 404(c).”); United States v. Celestine, No. 4:95-CR-41-D, 2022 WL 3974143 (E.D.N.C. Aug. 31, 2022) (“[C]ourts may consider a motion for a reduced sentence only if the defendant did not previously receive a sentence or sentence reduction in accordance with the Fair Sentencing Act and did not have a motion under the First Step Act denied ‘after a complete review of the motion on the merits.’”) (citing First Step Act, § 404(c), 132 Stat. at 5222).

Because this is the second motion Elliott has brought under the First Step Act and because the first motion was denied after a complete review on the merits, the court must **DISMISS** Elliott’s current motion.

It is so **ORDERED**.

Entered:

August 3, 2023


Michael F. Urbanski
Chief United States District Judge